Supreme Court, U.S.
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No. 96-1213

In The

Supreme Court of the United States

October Term, 1996

IN RE: LEONARD C. JAQUES,

Petitioner,

vs.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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I

PETITIONER HAS FAILED TO INVOKE THE SUPREME COURT'S JURISDICTION

The Supreme Court mandates, as a condition precedent to this Court's assuming jurisdiction, presentation of some "compelling reason." Petitioner has been served with an Amended Order to Show Cause why he should not be disbarred from the United States District Court for the Eastern District of Texas.[1] A partial hearing was conducted on November 12, 1997. The matter has been continued indefinitely by the trial court pending the final resolution of any criminal charges that might be considered in the disbarment procedure. Petitioner has sought to recuse the trial court and has filed two Applications for Writ of Mandamus in the United States Court of Appeals for the Fifth Circuit. He now seeks to file an Application for Writ of Mandamus in this Court. Petitioner has not yet been suspended or disbarred by the United States District Court for the Eastern District of Texas. Therefore, there has been no direct appeal to the United States Court of Appeals for the Fifth Circuit. The instant proceeding is simply an appeal from two summary orders by the Fifth Circuit Court of Appeals denying Petitioner's Application for Writ of Mandamus. (1a-2a.) As will be more specifically explained herein below, Petitioner misstates the facts and then mixes factual misstatements with allegations that Local Rule 3 of the Rules for the United States District Court for the Eastern District of Texas violate due process. There is nothing compelling in the lower courts that it could not be resolved through the ordinary appellate process.

Petitioner suggests the Fifth Circuit's summary denial of Petitioner's Applications for Writ of Mandamus, was a decision

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1. Contrary to Petitioner's position that Local Rule 3 places the burden of proof on the Petitioner, the trial court has clearly indicated the burden is on the special prosecutor to prove all of the allegations in the Order to Show Cause by clear and convincing evidence. (6a-15a.)

in conflict with the decisions of other courts of appeal on the same important matter, to-wit: *In Re Ming*, 469 F.2d 1352 (7th Cir. 1972) and *United States v. Jones*, 29 F.3d 1549 (11th Cir. 1994). In *Ming*, the Seventh Circuit simply concluded that a conviction "cannot be used" to disbar a lawyer when that "conviction" has not become final. The issues in *Ming* and *Jones* have not even been addressed in the Fifth Circuit, so conflict cannot exist. More importantly, issues in *Ming* and *Jones* are premature. Judge Schell has continued the proceedings pending the outcome of criminal assault allegations against the Petitioner in the Michigan court. That is, Petitioner has not been "convicted," and for that reason, Judge Schell continued the hearing. Further, there has been no indication that Judge Schell would consider the "conviction" exclusively as evidence sufficient to disbar Petitioner. Petitioner testified in his own behalf and will doubtless be given an opportunity to explain his conduct surrounding the alleged criminal assault against another lawyer during the trial of a federal civil action in Michigan.

Petitioner's reliance on *United States v. Jones* as being in conflict with the Fifth Circuit is likewise incorrect. The Fifth Circuit ruled on Petitioner's most recent Petition for Writ of Mandamus on November 4, 1996. Judge Schell conducted a Show-Cause Hearing on November 12, 1996, (6a-15a) and ultimately continued the case. *Jones* holds that in the limited factual context therein, judicial findings are not sufficient to support a Motion for Summary Judgment. There was no record before the Fifth Circuit on November 4, 1996. Thus, the Fifth Circuit could not have implicitly endorsed a procedure allegedly in conflict with *Jones*. Further, Petitioner assumes *Jones* is analogous to the instant case without giving the Fifth Circuit the benefit of reviewing the appellate record in the specific context presented.

PETITIONER HAS MADE FACTUAL MISSTATEMENTS

Local Rule 3 of the Rules of the United States District Court for the Eastern District of Texas establishes a clear and specific method for initiation of disciplinary procedures. Contrary to Petitioner's assumption that Judge Schell initiated the process *sua sponte*, the process mandated by Local Rule 3 was followed precisely. (6a-15a, 16-19a.) Further, Petitioner has alleged that Judge Schell attempted to "dredge up" records in other cases that might assist in the prosecution of current disbarment proceedings. As evidence of Petitioner's inflammatory remarks, he cites the Court to Judge Schell's Order Denying the Motion to Recuse. (20a-28a.) A cursory reading of that Order clearly reflects that not only was Judge Schell not attempting to "dredge up" anything, but he was utilizing his best efforts to be a fair and impartial trier of fact. Additionally, Petitioner alleges, without any evidence in the record, that Judge Schell had "ex parte contact with Thomas Emery, a Michigan attorney, and furnished a document to be used by Mr. Emery in an unsuccessful attempt to have Mr. Jaques disqualified as counsel for the Plaintiff in *Cook v. American Steamship Co.*, No. 91-CV-72412-DT (E.D. Mich.)." That statement is simply incorrect. The truth is that Mr. Emery spoke with Judge Schell's law clerk and requested a copy of an Order entered by the court (being a matter of public record). Judge Schell has neither met nor spoken to Mr. Emery. (11a.)

Petitioner also alleges that Judge Schell admitted, "ex parte dealings with the special prosecutor." Petitioner either confuses what the concept of ex parte entails, or simply chooses to ignore the truth. Petitioner implicitly has accused not only the special prosecutor, but Judge Schell with violation of Rule 3.05(b) of the Texas Disciplinary Rules of Professional Conduct. (29a-30a.) Ex parte communications arise only in the context of pending

litigation or criminal proceedings. In the instant case, the court was the complainant and could have proceeded without the necessity of a special prosecutor. In that event, the court could have prepared its own Order to Show Cause. The court chose to appoint a special prosecutor, and prior to the filing of any disciplinary proceedings against Petitioner, assisted in the preparation of the Show-Cause Order. Such can hardly be considered an ex parte dealing. More importantly, the court, in order to provide Mr. Jaques with as much due process as possible, ordered the special prosecutor to amend the Order to Show Cause to set out all charges that the special prosecutor would pursue at the hearing, reference the rules governing a lawyer's conduct that may have been violated and exactly how they were violated, and set out all elements of each rule and explain how each is satisfied. (3a-5a.) Petitioner takes additional liberties with the truth in alleging that the trial court indicated that he would not "independently determine whether Respondent is, in fact, guilty of misconduct." The purpose of the hearing was to determine whether or not Petitioner was guilty of misconduct sufficient to disbar him from the United States District Court for the Eastern District of Texas. The trial court merely indicated that, in some circumstances, witnesses would not be necessary. At the hearing conducted on November 12, 1996, Mr. Jaques was given a full and complete opportunity to explain his conduct. In fact, over Mr. Jaques objections, the court protected Petitioner's privilege against self incrimination by continuing the balance of the hearing pending the outcome of criminal assault charges in Michigan.

REASONS FOR DENYING THE WRIT

I.

LOCAL RULE 3 OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTKICT OF TEXAS DOES NOT FAIL TO PROVIDE RESFONDENT WITH PROCEDURAL DUE PROCESS.

Respondent herein has previously addressed Petitioner's misstatements of fact concerning allegations of ex parte investigation and ex parte contact with the special prosecutor. Those issues will not be visited herein again. Further, as will be discussed hereinbelow, contrary to Petitioner's position, the burden of proof is placed upon the special prosecutor to prove all of the allegations by clear and convincing evidence after proper notice and opportunity to be heard have been given to the Petitioner herein.

Petitioner apparently misconstrues this Court's holding in *In Re Ruffalo*, 390 U.S. 544 (1968). *Ruffalo* held only that before an attorney can be disbarred, he is entitled to "fair notice as to the reach of the grievance procedure and the precise nature of the charges . . ." In the instant case, the trial court has gone to extreme lengths to give the Respondent, not only reasonable notice, but specific and detailed notice of the grounds alleged, the rules violated and an explanation of how the rules were violated. (31a-41a.) In fact, Respondent was afforded more due process than is required by either statute or case-law precedent. *In Re Ruffalo, supra*; *In Re Thalheim*, 853 F.2d 383 (5th Cir. 1988).

Petitioner suggests that *Ruffalo* has mandated the appointment of a decision-maker other than the trial court herein to hear the charges against the Petitioner. Such is not the holding in *Ruffalo*, nor does the Petitioner cite the Court to any authority so holding.

II.

LOCAL RULE 3 DOES NOT VIOLATE PROCEDURAL DUE PROCESS BY FAILING TO PROVIDE FOR A DISINTERESTED, IMPARTIAL DECISION MAKER.

Petitioner's reliance on *In Re Medrano*, 956 F.2d 101, 103 (5th Cir. 1992) is misplaced or inappropriate. *Medrano* held, specifically and exclusively, that the standard of proof in disbarment proceedings is clear and convincing — reversing the trial court's reliance on a preponderance of the evidence standard. The court's concern was with the trial court's failure to provide procedural due process. *Medrano* did not even challenge the validity of the Local Rules.

Petitioner suggests that because the Eastern District of Louisiana subscribes to a different disbarment procedure, such renders the Local Rules of the Eastern District of Texas, per se, in violation of due process. Petitioner fails to cite any case supporting his position or present any explanation how the Local Rules herein fail to provide due process in this context — specifically, fair notice and an opportunity to be heard. In fact, this court has arguably gone to extreme lengths in giving Petitioner the unfettered opportunity for not only fair notice, but specific and detailed notice. The court ordered the Special Prosecutor to amend the Order to give Petitioner notice of all Rule violations, how they were violated and the specific facts supporting the allegations. (3a-5a.) The court even refused to consider the ground alleging criminal conduct until those charges were resolved.

Petitioner asserts that Local Rule 3 violates due process for failure to assign the proceedings randomly to another judge. It should be noted that the proceedings herein are not even authorized without *en banc* approval by the Judiciary of the

Eastern District of Texas. (Loc. R.E.D. Tex. 3(d)(2)(A).) In addition to *en banc* approval, Petitioner was given specific and detailed notice of the charges and ample time to respond.

Likewise, the Petitioner's reliance on *In Re Thalheim*, *supra*, is misplaced. Here, the court followed the mandates of Rule 3 and applicable case law. In other words, Petitioner was afforded more due process than was required by either statute or case-law precedent. In *Thalheim*, the converse occurred, because the trial court ignored a clear and specific disciplinary procedure by the Local Rules. *Id* 388.

Petitioner's suggestion that Local Rule 3 is inquisitorial as opposed to accusatorial in nature is incorrect. No provision is made under Local Rule 3 for the court to investigate, examine witnesses or prosecute. The court merely makes an initial inquiry to determine whether or not a complaint should be filed. The complaint is to be filed only after full authorization by the en banc court.

III.

LOCAL RULE 3 DOES NOT PLACE THE BURDEN OF PROOF ON THE ACCUSED TO SHOW THAT HE SHOULD NOT BE SUSPENDED OR DISBARRED.

The court has made it clear that the burden of proof is on the Special Prosecutor to prove all of the specific allegations by clear and convincing evidence as mandated by established case law. (3a-5a, 6a-15a; *See also In Re Medrano*, *supra*.) Local Rule 3 does not regard earlier findings of civil misconduct as conclusive. Petitioner commingles potential evidentiary rulings by the court with alleged due process deficiencies in Local Rule 3. Local Rule 3 does not even address issues concerning types, deficiencies or degrees of proof necessary to disbar an attorney.

In essence, Petitioner's complaint involves some preliminary evidentiary rulings by the court concerning prior misconduct committed by the Petitioner. The trial court has not even determined that the Petitioner should be sanctioned, nor has the court refused to allow the Petitioner to present evidence justifying his previous conduct. In fact, the Petitioner has testified at length concerning the propriety of his previous actions. Thus, the Petitioner's complaint does not involve any potential due process deficiency in Rule 3, but instead focuses on the trial court's evidentiary rulings. Historically, evidentiary rulings are not appropriately reviewed by applications for Writ of Certiorari (42a-43a), and are better left to the normal appellate process.

CONCLUSION

Respondent prays that this Court reject Petitioner's Application for Writ of Certiorari in its entirety.

Respectfully submitted,

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APPENDIX A — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DENYING WRIT OF MANDAMUS FILED SEPTEMBER 16, 1996

(United States Court of Appeals — Fifth Circuit)

(Filed September 16, 1996)

(In Re: *Leonard C. Jaques; The Jaques Admiralty Law Firm, P.C.*, Petitioners; No. 96-40895)

Petition for Writ of Mandamus to the United States District Court for the Eastern District of Texas, Tyler.

Before HIGGINBOTHAM, WIENER and BENAVIDES, Circuit Judge.*

BY THE COURT:

IT IS ORDERED that the petitioner's motion to place case under seal is GRANTED.

IT IS FURTHER ORDERED that the petition for writ of mandamus is DENIED.

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* This case is being decided by a quorum. *See* 28 U.S.C. § 46(d).

APPENDIX B — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT DENYING WRIT OF MANDAMUS

(United States Court of Appeals -- Fifth Circuit)

(Filed November 4, 1996)

(*In Re: Leonard C. Jaques*, Petitioner; No. 96-41076)

Petition for Writ of Mandamus to the United States District Court for the Eastern District of Texas, Beaumont.

BEFORE HIGGINBOTHAM, WIENER and BENAVIDES, Circuit Judges.

BY THE COURT:

IT IS ORDERED that Petitioner's motion to place case under sear is GRANTED.

IT IS FURTHER ORDERED that the petition for writ of mandamus is DENIED.

APPENDIX C — MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, TYLER DIVISION GRANTING RESPONDENTS' 12(e) MOTION FOR MORE DEFINITE STATEMENT FILED SEPTEMBER 17, 1996

(filed September 17, 1996)

(Entered on Docket September 18, 1996)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Case No. 6:96-MC-160

IN THE MATTER OF LEONARD C. JAQUES AND THE JAQUES ADMIRALTY LAW FIRM, P.C.

MEMORANDUM OPINION AND ORDER GRANTING RESPONDENTS' 12(e) MOTION FOR MORE DEFINITE STATEMENT

Before the court is Respondents' 12(e) Motion for More Definite Statement. In seeking a more definite statement of the charges in the order to show cause, Respondents, Leonard C. Jaques and The Jaques Admiralty Law Firm, P.C. (hereinafter collectively "Jaques" unless otherwise indicated), argue: (1) that the show-cause order fails to specify how Respondents have violated the Eastern District of Texas Local court Rules and Texas Disciplinary Rules of Professional Conduct; (2) that the show-cause order is vague as to other rules that Respondents may have violated; and (3) that the show-cause order fails to

disclose the existence of documents or the names and addresses of witnesses upon which this proceeding is based.

Although the August 6, 1996 order to show cause gives clear notice to Jaques of the six incidents of conduct or behavior on which the court will focus at the show cause hearing, Jaques's motion requests the court to go further by referencing the rules governing a lawyer's conduct that may have been violated by Jaques.[1] In order to assist Jaques in making the connection between the conduct listed in the show cause order and the rules that were potentially violated, the court ORDERS the special prosecutor to file and serve upon Respondents an amended order to show cause. The amended order to show cause shall contain all the charges that the special prosecutor will pursue at the show cause hearing. With respect to each charge in the amended order, the special prosecutor shall reference all the rules that may have been violated and exactly how those rules were violated. Specifically, the special prosecutor shall set out the elements of each rule and explain how each element is satisfied. As the court indicated at the hearing with all counsel on August 29, 1996, the special prosecutor is permitted to amend the order to show cause with other potential rule violations found in his investigation.

After the special prosecutor files the amended order to show cause, Respondents shall file an amended answer to the charges and provide the court with additional briefing if necessary. Then the special prosecutor and Respondents shall (1) exchange documents that they intend to use at the show cause hearing

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1. At the show cause hearing in this proceeding, the special prosecutor bears the burden of proving all elements of a violation by clear and convincing evidence. *In re Medrano*, 956 F.2d 101, 102 (5th Cir. 1992).

and (2) provide one another with the names, address, and a summary of anticipated testimony of any witnesses that may be called. At a later date, the court will specify some appropriate deadlines for the parties.

Accordingly, Respondents' 12(e) Motion for More Definite Statement is hereby GRANTED.

SIGNED this the 13th day of September 1996.

s/ Richard A. Schell
RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE

APPENDIX D — TRANSCRIPT EXCERPTS OF NOVEMBER 12, 1996, SHOW-CAUSE HEARING BEFORE HONORABLE RICHARD A. SCHELL, UNITED STATES DISTRICT JUDGE

(reported by C. Frank McMillan 409/654-2805)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

CIVIL ACTION
NO. 6:96-MC-160
Beaumont, Texas
November 12, 1996

IN THE MATTER OF LEONARD C. JAQUES

SHOW CAUSE HEARING BEFORE THE HONORABLE RICHARD A. SCHELL, UNITED STATES DISTRICT JUDGE

APPEARANCES:

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[By the Court]. . .

All right. I would like to go through some things about this proceeding and then we will get right into the evidence.

On July 9th, 1996, the U.S. District Court for the Eastern District of Texas, initiated disciplinary proceedings against Leonard C. Jaques, who is a member of the Bar of this Court, and against the Jaques Admiralty Law Firm, pursuant to Local Rule 3. Local rule 3(d)(2)(A) provides that: "When it is shown to a judge of this Court that a member of the Bar has engaged in conduct which might warrant disciplinary action, the judge receiving the information shall bring the matter to the attention of the full court." As the presiding judge at the trial of *Dermot Patrick Carroll versus Leonard c. Jaques and the Jaques Admiralty Law Firm,* tried to a jury in February of 1996, I clearly became aware of such information, contemplated by Local Rule 3, when the jury returned its verdict on February 27th, 1996, finding by clear and convincing evidence that both Leonard Jaques and his Firm had committed fraud on a client.

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After entering a judgment on that verdict in March of this year and after issuing ruling on several post-trial motions, a hearing was held in connection with the *Carroll versus Jaques* case, giving Mr. Jaques the opportunity to show cause why he should not be sanctioned for disruptive and abusive behavior at his own deposition in the case before — before the case went to trial.

A hearing was held on April 24th. At that hearing, Mr. Jaques was given the opportunity to present argument and evidence. Following that hearing, I entered an order imposing sanctions on Mr. Jaques for his deposition behavior. This order was signed May 21st, 1996. Before making a final decision on whether to present this information to the full court of the Eastern District of Texas, I asked my law clerk to conduct a computer assisted legal search to see if this fraud verdict and Mr. Jaques' deposition behavior were out of the ordinary or out of character for Mr. Jaques. The computer search turned up a number of published opinions from courts around the country revealing other incidents of misconduct.

Mr. Jaques' First Petition for Writ of mandamus, fined in September of this year with the Fifth Circuit, and in his Motion for Recusal, filed August 28th, 1996, suggest that this Court has somehow acted improperly by conducting legal research which tuned up published court opinions imposing sanctions on Mr. Jaques for misconduct. On the contrary, this Court should make an effort to see whether any misconduct has occurred elsewhere before making a decision to institute disciplinary proceedings.

Also, before making a final decision on whether to present this matter to the full court, the Honorable Bernard Friedman,

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U.S. District Judge for the Eastern District of Michigan, contacted me requesting copies of documents and orders in the public record in *Carroll versus Jaques*. Contrary to Mr. Jaques' assertions in his motion to recuse me and in his First Petition for Writ of Mandamus, there is absolutely nothing inappropriate about Judge Friedman's request or my providing him with copies of our file in *Carroll v. Jaques*. I am happy to help my judicial colleagues and I will continue to do so.

Then, subsequently, on June 13th, 1996, Judge Friedman signed his opinion and order, imposing sanctions on Mr. Jaques and finding that he had committed an assault in open court on opposing counsel, Thomas Emery, during a recess in a civil trial in Judge Friedman's Court. With knowledge of the fraud verdict in *Carroll versus Jaques,* together with Mr. Jaques' misconduct at his deposition in that case and with Judge Friedman's finding that Mr. Jaques had assaulted opposing counsel in the courtroom and the other instances of Mr. Jaques' conduct judicially determined by other courts in published opinions, this matter was presented to the full court of the Eastern District of Texas, and this disciplinary proceeding was instituted against Mr. Jaques and his Firm. The Firm was included because of the fraud finding against the Firm. Later, on September 13th, 1996, I reconsidered the inclusion of the Firm and dismissed the Jaques Admiralty Law Firm from this disciplinary matter.

On October 10th, 1996, I signed the Amended Order to Show Cause which repeated the same six instances of conduct and listed in my Original August 6th Show Cause Order. The October 10th order went further, by not only giving Mr. Jaques notice of his conduct that the Court would focus on at the hearing, but also explaining how his conduct may have violated the various Texas Disciplinary Rules of Professional conduct listed in the Amended Order to Show Cause.

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The show cause method of resolving attorney disciplinary matters is the standard method of proceeding. As a matter of fact, the Fifth Circuit's Local Rule 46 adopts Federal Rule of Appellate Procedure 46, which sets forth a procedure that is virtually identical to the procedures set forth in Local Rule 3 of the Eastern District of Texas that I have followed. Also, Rule 8 of the rules of the Supreme Court of the United States governs disbarment and disciplinary action and provides for a Show Cause Hearing.

In this petitioner or in Mr. Jaques' Petition for Writ of Mandamus, Mr. Jaques contends that Local Rule 3 is unconstitutional. In this Court's opinion, there is nothing unconstitutional about Local Rule 3 or the way it has been applied to Mr. Jaques. Mr. Jaques' Petition for Writ of Mandamus contains a number of assertions which are in some cases absolutely false and that some require clarification. Some of the arguments made in the mandamus petition reiterate arguments previously made in the Motion for Recusal. I won't go over those issues, because my rulings are contained in my August 30th Order, denying the Motion for Recusal. However, I do want to clarify, for the record, a few assertions made in the First Petition for Writ of Mandamus.

First, there is, in my opinion, no conflict in my having served as Trial Judge in *Carroll versus Jaques* and in presiding over this disciplinary matter. *Carroll versus Jaques* was tried to a jury. what I learned about Mr. Jaques in that trial was obviously not from an extrajudicial source. As a matter of fact, all six of the discrete instances of conduct by Mr. Jaques, that are contained in the Show Cause Order, have already been judicially determined. Second, Mr. Jaques asserts that my sanctions against him for his language and misbehavior at his deposition were

imposed without an Evidentiary Hearing. That is absolutely false. Mr. Jaques had the opportunity at the April 24th Sanctions Hearing to present whatever evidence and argument he chose to. At that hearing, Mr. Jaques personally addressed the Court and his counsel submitted a letter from a physician. Mr. Jaques' counsel representing him at that hearing, Jeff Nobles, was asked, and I'm reading from the transcript, "Now, Mr. Nobles, would you like to say anything or do you have anything to offer for the Court's consideration on Mr. Jaques' behavior and conduct at his deposition as a party in this litigation?" After a short discussion, Mr. Nobles introduced Mr. Jaques to address the Court and informed the Court that that's all that they had. There was an opportunity for an Evidentiary Hearing at that Sanctions Hearing.

Attorney Thomas Emery, who is the attorney found by Judge Friedman to have been assaulted in the courtroom in Michigan by Mr. Jaques, called this Court and requested a copy of an order in the *Carroll versus Jaques* case from my law clerk. My law clerk also requested a copy of one of Judge Friedman's orders from Mr. Emery.

As a courtesy to any lawyer, this Court will usually provide copies of orders and filings if they are not too voluminous. This is perfectly appropriate. Mr. Emery is not a party to Mr. Jaques' disciplinary action; and if he were called as a witness here, I could objectively judge his credibility, having never spoken or met the man. Having never spoken to him or met him.

On another point. Under Local Rule 3, as the Judge in the disciplinary matter, I chose the option of appointing counsel to prosecute this matter by presenting argument and any evidence on the six judicially determined occurrences of Mr. Jaques'

conduct listed in the Show Cause Order. I could have chosen to proceed without specially appointing counsel, but I wanted a lawyer with some expertise in the Texas Disciplinary Rules of Professional Conduct. That is why I appointed Mr. Roebuck.

On another point. With our without special counsel, it is appropriate for the court to choose the examples of apparent misconduct upon which it will focus at the Show Cause Hearing and to prepare and sign its own Show Cause Order. There is no denial of due process with such a procedure for two reasons.

No. 1, Mr. Jaques has an opportunity to appear here and show cause why these instances do not violate the Disciplinary Rules, or why discipline is inappropriate here, or if a violation has occurred, what level of discipline would be appropriate.

The second reason there is no denial of due process and importantly contrary to Mr. Jaques' assertions in his First Petition for Writ of Mandamus that this disciplinary proceeding resembles an inquisition in which Judge personally makes unproven allegations against a lawyer and then sits in judgment of his own allegations, I have not originated any of these charges in the Amended Show Cause Order. I have not conjured up allegations in the traditional sense of unadjudicated assertions. All six of these instances of conduct by Mr. Jaques have already been adjudicated and resolved by a court with jurisdiction over the matter and were determined in several cases to constitute misconduct by Mr. Jaques.

The first cited instance, the allegations against Mr. Jaques that he physically assaulted another lawyer in open court, were obviously made by Mr. Emery, the lawyer found to have been assaulted during a break in the trial of *cook versus American*

Steamship Company in the Eastern District of Michigan. The findings were made by Judge Friedman.

The second cited instance, the allegations that Mr. Jaques used abusive language and disruptive behavior during his deposition in *Carroll versus Jaques*, were obviously made by Mr. Blanks, the lawyer taking Mr. Jaques' deposition. The findings at the Sanctions Hearing were made by me.

The third cited instance, the findings regarding Mr. Jaques' failure to comply with pre-trial orders in MDL-875, resulting in the dismissal of 18,000 maritime asbestos cases were made by Judge Weiner.

The fourth episode, the allegations that Mr. Jaques committed fraud upon his client, Dermot Patrick Carroll, were obviously made by Mr. Carroll in his lawsuit, not by this Court. The jury made the findings of fraud by clear and convincing evidence in that trial of *Carroll versus Jaques*.

The fifth episode, the findings that Mr. Jaques refused to comply with the discovery order in *O'Neill versus AGWI Lines*, were made by Judge Kent. The allegations probably originated with Mr. Jaques' opposing counsel.

No. 6, the findings affirming a district court's decision to hold Mr. Jaques in contempt for violating an order to appear for trial and for misrepresenting to two federal judges his whereabouts and his reasons for failing to appear, were made by clear and convincing evidence by the Sixth Circuit Court of Appeals.

I did not originate any of these allegations and I made the

findings in one of the six cited episodes. This Show Cause Hearing is not remotely the same as the characterization placed upon it by Mr. Jaques' counsel as an inquisition.

Turning to the Motion for Summary Judgment and Motion to Dismiss filed by Mr. Jaques that are now pending.

As I stated in my Order of November 8th, 1996, following our on the record conference call on that day, which was this last Friday, I have not had a chance to review those motions. Mr. Roebuck has not had time to respond. I received the motions in my chambers on October 30th, for the Motion to Dismiss and November 4th, for the Motion for summary Judgment. I will simply carry the Motion for Summary Judgment in to this hearing, so that whatever evidence Mr. Jaques presented in his Motion for Summary Judgment, he can simply re-present here today for this hearing. I will make a ruling on the Motion to Dismiss at a later time when I make a decision on this entire matter.

I did notice in the Motion to Dismiss on Page 3, an assertion by Mr. Androphy on behalf of Mr. Jaques that is incorrect. The motion states that Mr. Jaques has had no opportunity to conduct discovery. That is not true. I have never prohibited discovery in this matter. I did say during our August 29th, 1996 conference call in this matter, that because of the six — or because the six cited episodes of Mr. Jaques' conduct had already been the subject of judicial proceedings and findings, that I did not see the need to relitigate those findings. I still feel that way with respect to the findings that were made by clear and convincing evidence. However, I have never prohibited discovery. I did deny Mr. Androphy's request over the weekend to subpoena Judge Kent.

Appendix D

If any judges' earlier findings are not made by clear and convincing evidence and if other evidence besides the judge's testimony is insufficient, then perhaps that particular episode cannot form the basis for any disciplinary action. But I will not allow either side to subpoena a judge, if that's even possible under the rules.

Also, I have granted special counsel's motion to correct the date of the alleged assault in item one of the Amended Order to Show Cause. The correct date is May 7th, 1996, rather than June 13th, 1996. June 13th was the date Judge Friedman sanctioned Mr. Jaques and signed his order. . . .

* * * * * * * * * * * * * * *

CERTIFICATION

I hereby certify that the foregoing is a correct transcript from the electronic recording of the proceedings in the above-entitled matter, to the best of my ability.

s/ C. Frank McMillian
C. Frank McMillian
Official Court Reporter

11-20-96
Date

APPENDIX E — EASTERN DISTRICT OF TEXAS LOCAL RULE 3

TEXAS RULES OF COURT — FEDERAL — 1996

INCLUDING AMENDMENTS RECEIVED THROUGH FEBRUARY 1, 1996

* * *

LOCAL COURT RULES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS

Effective October 14, 1987
Including Amendments Received Through February 2, 1996

* * *

RULE 3. ATTORNEYS: DISCIPLINE, DISBARMENT

(a) GENERALLY.

The standards of professional conduct adopted as part of the Rules Governing the State Bar of Texas shall serve as a guide governing the obligations and responsibilities of all attorneys appearing in this Court. It is recognized, however, that no set of rules may be framed which will particularize all the duties of the attorney in the varying phases of litigation or in all the relations of professional life. Therefore, the attorney practicing in this Court should be familiar with the duties and obligations imposed upon members of this Bar by the Texas Disciplinary rules of Professional Conduct, court decisions, statutes, and the usages, customs and practices of this Bar.

Appendix E

(b)

DISCIPLINARY ACTION INITIATED IN OTHER COURTS.

(1) A member of the bar of this court shall automatically lose his or her membership if he or she loses, either temporarily or permanently, the right to practice law before any state or federal court for any reason other than nonpayment of dues, failure to meet continuing legal education requirements or voluntary resignation unrelated to a disciplinary proceeding or problem.

(2) When it is shown to the court that a member of its bar has been either disbarred or suspended, the clerk shall enter an order for the court, effective ten days after issuance unless sooner modified or stayed, disbarring or suspending the member from practice in this court upon terms and conditions identical to those set forth in the order of the other court.

(c)

CONVICTION OF A CRIME.

A member of the bar of this court who is convicted of a felony offense in any state or federal court will be immediately and automatically suspended from practice and thereafter disbarred upon final conviction.

(d)

DISCIPLINARY ACTION INITIATED IN THIS COURT.

(1) *Grounds for Disciplinary Action.* This court may, after the member has been given an opportunity to show cause to the contrary, take any appropriate disciplinary action against any member of its Bar:

(A) for conduct unbecoming a member of the Bar;

(B) for failure to comply with these local rules, the court's Civil Justice Expense and Delay Reduction Plan or any other rule or order of this court;

(C) for unethical behavior;

(D) for inability to conduct litigation properly; or

(E) because of conviction by any court of a misdemeanor offense involving dishonesty or false statement.

(2) *Disciplinary Procedures.*

(A) When it is shown to a judge of this court that a member of this bar has engaged in conduct which might warrant disciplinary action, the judge receiving the information shall bring the matter to the attention of the full court as to whether disciplinary proceedings should be held. If the court determines that further disciplinary proceedings are necessary, the court will notify the lawyer of the charges and give the lawyer opportunity to show cause why he or she should not be suspended or disbarred. Upon the charged lawyer's response to the order to show cause, and after a hearing if requested or upon expiration of the time prescribed for a response if no response is made, the court shall enter an appropriate order.

(B) At any hearing, the charged lawyer shall have the right to counsel and at least fourteen days' notice of the time and charges. Prosecution of the charges may be

conducted by an attorney specially appointed by the court. Costs of the prosecutor and any fees allowed by the court shall be paid from the attorney admission fee fund.

(e)
NOTIFICATION OF DISCIPLINARY ACTION.

Upon final disciplinary action by the court, the clerk shall send certified copies of the court's order to the State Bar of Texas, the Fifth U.S. Circuit Court of Appeals and the National Discipline Data Bank operated by the American Bar Association.

(f)
REINSTATEMENT.

Any lawyer who is suspended by this court is automatically reinstated to practice at the end of the period of suspension. Any lawyer who is disbarred by this court may not apply for reinstatement for at least three years from the effective date of his or her disbarment. Petitions for reinstatement shall be sent to the clerk and assigned to the chief judge for a ruling. Petitions for reinstatement must include a full disclosure concerning the attorney's loss of bar membership in this court and any subsequent felony convictions or disciplinary actions that may have occurred in other federal or state courts.

[Amended October 28, 1994.]

APPENDIX F — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS, BEAUMONT DIVISION DENYING RESPONDENTS' MOTION FOR RECUSAL FILED AUGUST 30, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

Case No. 6:96-MC-160

IN THE MATTER OF LEONARD C. JAQUES AND THE JAQUES ADMIRALTY LAW FIRM, P.C.

ORDER DENYING RESPONDENTS' MOTION FOR RECUSAL

Before the court is Respondents' Motion for Recusal.[1] This matter began on July 9, 1996, when the judges of the Eastern District of Texas unanimously agreed, at a regular meeting, to initiate disciplinary proceedings against Leonard C. Jaques and The Jaques Admiralty Law Firm, P.C., (hereinafter collectively "Jaques") for violations of the Eastern District of Texas Local Court Rules 3(a) and 3(d)(1)(A)-(D). (The Order to Show Cause dated August 6, 1996 is incorporated herein and attached to this order.) Jaques seeks recusal arguing that this court is biased and prejudiced against him and that the court cannot impartially adjudicate this disciplinary proceeding.

1. When faced with the possibility of sanctions, Jaques regularly files a motion to recuse the presiding judge. *See, e.g., Cook v. American Steamship Co.*, No. 91-CV-72412-DT (E.D. Mich. June 13, 1996) (order denying Jaques's motion to recuse presiding judge); *O'Neill v. AGWI Lines*, No. 95-40102 (5th Cir. March 6, 1996) (same). after being sanctioned in *Cook*, Jaques again filed a motion to recuse. *Cook v. American Steamship Co.*, No. 91-CV-72412-DT (E.D. Mich. July 18, 1996) (order denying Jaques's second motion to recuse presiding judge).

Appendix F

Section 144 provides:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.
>
> The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than ten days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith.

28 U.S.C. § 144. "Section 144 relates only to charges of actual bias." *Henderson v. Department of Public Safety and Corrections*, 901 F.2d 1288, 1296 (5th Cir. 1990). When a court passes on the legal sufficiency of the affidavit, it may not pass on the truth of the matters alleged. *Id.* Under section 144, a legally sufficient affidavit must meet the following requirements: "(1) the facts must be material and stated with particularity; (2) the facts must be such that if true they would convince a reasonable man that a bias exists; and (3) the facts must show the bias is personal, as opposed to judicial, in nature." *Id.*

Appendix F

The literal ten-day requirement of section 144 no longer applies because formal terms of court were abolished long ago. *Pomeroy v. Merritt Plaza Nursing Home, Inc.*, 760 F.2d 654, 658 (5th Cir. 1985). "Instead, courts have simply required a party to exercise reasonable diligence in filing an affidavit after discovering facts that show bias." *Id.* The judge who is the subject of a motion for recusal need not refer consideration of the motion or affidavit to another judge. *In re Corrugated Container Antitrust Litigation*, 614 F.2d 958, 963 n.9 (5th Cir. 1980). In fact, such a procedure as a general rule is unwise. *Id.* In determining whether a court has bias or prejudice under sections 144 and 445(b), the court should apply the same legal standards under each section. *Id.* at 965.

Section 455 provides:

> (a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
>
> (b) He shall also disqualify himself in the following circumstances:
>
> > (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding. . . .

28 U.S.C. § 455. The standards for determine impartiality depend on the source of the judge's alleged prejudice or bias. *In re Asbestos Litig.*, 90 F.3d 963, 989 (5th Cir. 1996). "to the extent

that a judge has become biased due to facts he has learned during a judicial proceeding, he must recuse himself only if fair judgment would be impossible." *Id.* "If the alleged partiality stems from a source other than a judicial proceeding, a judge must recuse himself if 'a reasonable and objective person, knowing all of the facts, would harbor doubts concerning the judge's [im]partiality.' " *Id.* (citing *United States v. Jordan*, 49 F.3d 152, 155 (5th Cir. 1995)).

In determining that the "extrajudicial source" doctrine applies to section 455(a), the Supreme Court explained:

> First, judicial rulings alone almost never constitute valid basis for a bias or partiality motion. . . . In and of themselves (*i.e.*, apart from surrounding comments or accompanying opinion), they cannot possibly show reliance upon an extrajudicial source; and can only in the rarest circumstances evidence the degree of favoritism or antagonism required . . . when no extrajudicial source is involved. Almost invariably, they are proper grounds for appeal, not for recusal. Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.

Liteky v. United States, 114 S. Ct. 1147, 1157 (1994). "[The

words 'bias or prejudice'] connote a favorable or unfavorable disposition or opinion that is somehow *wrongful or inappropriate*, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess . . . or because it is excessive in degree. . . ." *Id.* at 1155 (emphasis in original). "The judge who presides at a trial may, upon completion of the evidence, be exceedingly ill disposed towards the defendant, who has been shown to be a thoroughly reprehensible person. But the judge is not thereby recusable for bias or prejudice, since his knowledge and the opinion it produced were properly and necessarily acquired in the course of the proceedings, and are indeed sometimes (as in a bench trial) necessary to completion of the judge's task." *Id.* "A motion to disqualify is committed to the sound discretion of the judge and [the] decision will only be reversed if there has been an abuse of that discretion." *In re Hipp, Inc.*, 5 F.3d 109, 116 (5th Cir. 1993).

Jaques argues that the court should disqualify itself from conducting this disciplinary proceeding for the following reasons: (1) the court's adjudication of this disciplinary proceeding pursuant to the local rules violates Jaques's due process rights because the court assisted the special prosecutor with the charges in this matter; (2) this court's staff had personal contact with a potential witness; and (3) the court has prejudged the character for truthfulness of Jaques.

After carefully reviewing Jaques's motion for recusal, the court determines that Jaques's motion and supporting affidavit do not require disqualification. Any facts learned by this court about Jaques and his firm were acquired through this disciplinary proceeding or the prior proceeding in which Jaques was sued for fraud on a client. *See Carroll v. Jaques*, 927 F. Supp. 216

(E.D. Tex. 1996). This court has no personal bias or prejudice, as defined by *Liteky*, 144 S. Ct. at 1155, against Jaques or his firm. In adjudicating these proceedings, the court can exercise fair judgment. *See In re Asbestos Litig.*, 90 F.3d at 989. In his affidavit, Jaques states that this court has had extrajudicial contacts with other courts and a potential witness.[2] Neither the court nor its staff have had any contact with anyone outside "the course of the current proceedings, or of prior proceedings." *Liteky*, 144 S. Ct. at 1157. But, even assuming that these contacts can somehow be characterized as extrajudicial or outside the course of proceedings with Jaques, a reasonable and objective person, knowing all the facts, would not harbor doubts concerning this court's impartiality. *See In re Asbestos Litig.*, 90 F.3d at 989. This court has no deep-seated favoritism or antagonism that makes fair judgment impossible. In the hearing to show cause, the court will be concerned with prior judicial findings as to Jaques's behavior rather than necessarily the content of Jaques's personal character.

---

2. Tne staff of this court have contacted staff of other federal district courts for the purpose of obtaining court records related to this proceeding. These records primarily consist of briefs filed by Jaques and the related orders. These records directly relate to the charges in the order to show cause in this proceeding. With respect to this court's contact with Thomas Emery as referenced in Jaques's affidavit, Mr. Emery initiated contact with this court for the purpose of obtaining a copy of an order entered in the fraud case against Jaques. This order, unpublished at the time of Mr. Emery's request, is published under the style *Carroll v. Jaques*, 926 F. Supp. 1282 (E.D. Tex. 1996). This contact with Mr. Emery in no way affects this court's impartiality. The parties have represented to the court that they have no intention of calling Mr. Emery as a witness. Additionally, Mr. Emery's testimony probably would have little relevance to these proceedings.

Strangely, Jaques views this court's extension of a courtesy to a lawyer, Mr. Emery, as a basis for bias and prejudice. Just two days ago, Jaques's counsel contacted this court's staff by

Jaques argues that the court's adjudication of this disciplinary proceeding pursuant to the local rules violates Jaques's due process rights because the court assisted the special prosecutor with the charges in this matter. Jaques cites *In re Medrano*, 956 F.2d 101, 102 n.2 (5th Cir. 1992) for the proposition that this court cannot conduct this proceeding because this came court brought the information related to Jaques's misconduct to the full court of the Eastern District, which in turn initiated this disciplinary proceeding. Jaques relies on an oblique reference by the Fifth Circuit to some other districts' local rules. The Fifth Circuit referred the Western District of Texas to these rules to assist it in adopting a formal disciplinary rule. *Id.* Jaques argues that these other districts' local rules, which the Fifth Circuit refers to, do not allow the judge who complains of alleged lawyer misconduct to conduct the resulting disciplinary proceeding. The Fifth Circuit in the *Medrano* decision, however, did not require the district court that initiated the disciplinary proceeding to recuse itself from adjudicating the proceeding to a conclusion. *Id.* at 103-105. In fact, the Fifth Circuit remanded the case to the district court to conduct further proceedings applying the correct evidentiary standard. *Id.* at 105.

Although this court assisted the special prosecutor in the preparation of the charges in this matter, this assistance in no way denies Jaques or his firm due process. The assistance provided to the special prosecutor was at the genesis of this proceeding.[3] Obviously, it is the court which initially became aware of certain instances of misconduct by Jaques which suggested the need for this disciplinary proceeding. The court

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3. This court has had no other contact with the special prosecutor except to (1) provide him court documents on occasion and (2) arrange telephone conference in which all counsel were in attendance.

must then decide whether to appoint a special prosecutor, and if one is appointed, inform the special prosecutor of the nature and scope of his duties. In his affidavit, Jaques establishes no injury to his due process rights on account of the assistance provided to the special prosecutor. Jaques merely states that this is another instance of bias or prejudice. As noted previously, these types of occurrences in the course of proceedings cannot be a basis of recusal.

Finally, Jaques argues that this court has prejudged his character for truthfulness. Jaques's affidavit proffers two bases. First, this court's previous order in the fraud action against Jaques states: "When Jaques proffers excuses, mitigating circumstances, and justifications for his abusive behavior, the court, however, must take into account that Jaques's credibility is weak." *Carroll v. Jaques*, 926 F. Supp. at 1290. Second, at a pretrial hearing in the fraud case against Jaques, this court stated: "[Then, what you're telling me is,] you're afraid that your client may have told you other things that are untrue?" Sealed Tr. dated Feb. 20, 1996 at 16 (bracketed text was omitted from Jaques's motion and affidavit).[4] In this instance, the court was not making a

4. At this hearing just minutes before trial was to begin, Jaques's lawyers moved to withdraw from the case because of an "ethical conflict" and an "irreconcilable conflict" with their client. Sealed Tr. dated Feb. 20, 1996 at 10, 15. (Jaques's partner, Robert Swickle, was in attendance at this hearing; Jaques did not attend this hearing or the trial.) Jaques's lawyers argued that they were unable to zealously represent their client. On the eve of trial, plaintiff's counsel discovered key documents in the possession of a third party that should have been included among the documents that Jaques provided to his lawyers for mandatory disclosure. *Id.* at 4-9. The newly discovered documents were contrary to positions that Jaques had taken throughout the proceedings, including sworn testimony. *Id.* at 5-6, 10-11, 13, 15-16, 26-27. At no time during this prior proceeding against Jaques did this court have any doubt about the honesty and integrity of Jaques's counsel. Under different circumstances, Jaques's counsel performed competently and professionally at all times.

statement about Jaques's credibility but rather attempting to clarify a position taken by one of Jaques's lawyers. With respect to both of the foregoing instances cited by Jaques, the court determines that these statements by this court are not indicative of any personal bias or prejudice against Jaques or his firm. *See Liteky*, 114 S. Ct. at 1155. Moreover, these instances occurred within the course of prior proceedings. *Id.* at 1157.

In sum, Jaques has not shown that this court has bias or prejudice against him, and that this court cannot impartially adjudicate this disciplinary proceeding. Accordingly, Respondents' Motion for Recusal is hereby DENIED.

SIGNED this the 30th day of August 1996.

s/ Richard A. Schell
RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE

APPENDIX G — TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT, RULE 3.05

TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT
Revised October, 1994

Rule 3.05 Maintaining Impartiality of Tribunal

A lawyer shall not:

(a) seek to influence a tribunal concerning a pending matter by means prohibited by law or applicable rules of practice or procedure;

(b) except as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, communicate or cause anotner to communicate ex parte with a tribunal for the purpose of influencing that entity or person concerning a pending matter other than:

(1) in the course of official proceedings in the cause;

(2) in writing if he promptly delivers a copy of the writing to opposing counsel or the adverse party if he is not represented by a lawyer;

(3) orally upon adequate notice to opposing counsel or the adverse party if he is not represented by a lawyer;

(c) For purposes of this rule;

(1) "Matter" has the meanings ascribed by it in Rule 1.10(f) of these Rules;

(2) A matter is "pending" before a particular tribunal either when that entity has been selected to determine the matter or when it is reasonably foreseeable that that entity will be so selected.

Comment:

Undue Influence

1. Many forms of improper influence upon tribunals are proscribed by criminal law or by applicable rules of practice or procedure. Others are specified in the Texas Code of Judicial Conduct. A lawyer is required to be familiar with and to avoid contributing to a violation of, all such provisions. See Also Rule 3.06

2. In recent years, however, there has been an increase in alternative methods of dispute resolution, such as arbitration, for which the standards governing a lawyer's conduct are not as well developed. In such situations, as in more traditional settings, a lawyer should avoid any conduct that is or could reasonably be construed as being intended to corrupt or to unfairly influence the decision-maker.

Ex Parte Contacts

APPENDIX H — AMENDED ORDER TO SHOW CAUSE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS DATED OCTOBER 10, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CIVIL ACTION NO. 6:96-MC-160

IN THE MATTER OF LEONARD C. JAQUES and THE JAQUES ADMIRALTY LAW FIRM

SECOND AMENDED ORDER TO SHOW CAUSE

On July 9, 1996, all the judges of the Eastern District of Texas unanimously agreed to initiate disciplinary proceedings against LEONARD C. JAQUES and THE JAQUES ADMIRALTY LAW FIRM, P.C. for violations of the Eastern District of Texas Local Court Rule 3(a) and Rule 3(d)(1)(A-D). Subsequently, on September 13, 1996, the Court entered an Order directing the special prosecutor to abandon any proceedings against the JAQUES ADMIRALTY LAW FIRM, P.C. Accordingly, the proceedings against THE JAQUES ADMIRALTY LAW FIRM, P.C. are DISMISSED. Further, pursuant to Local Rule 3, LEONARD C. JAQUES (hereinafter sometimes referred to as "JAQUES") is hereby ORDERED to appear and show cause why discipline, up to and including disbarment from this District, should not be ordered against him for violations of Local Rule 3(d)(1)(A-D), and the Texas Disciplinary Rules of Professional Conduct 3.04(c)(5), 3.04(d), 3.01, 3.03(a)(1), 8.04(a)(2) and 8.04(a)(3), as incorporated under Local Rule 3(a). JAQUES may be subject to discipline under the foregoing rules for past and continuous actions injurious to

clients, attorneys, courts, and other participants in the legal system. The Court will consider the following instances of JAQUES' conduct:

1. On ~~June 13, 1996~~, in the Eastern District of Michigan, in open court, JAQUES committed an assault on opposing counsel. Rules violated: Local Rule 3(d)(1)(A) (conduct unbecoming a member of the Bar), Rule 8.04(a)(2) Texas Disciplinary Rules of Professional Conduct (committing a criminal act reflecting adversely on the lawyer's fitness as a lawyer) and Rule 3.04(c)(5) (a lawyer shall not engage in conduct intended to disrupt the proceedings).

Rule 8.05 of the Texas Disciplinary Rules of Professional Conduct provides in pertinent part as follows: "A lawyer is subject to disciplinary authority of this state if admitted to practice in this state or if specifically admitted by a court of this state for a particular proceeding."

In addition to being answerable for his or her conduct occurring in this state, any such lawyer also may be disciplined in Texas for conduct occurring in another jurisdiction or resulting in lawyer discipline in another jurisdiction, if it is professional misconduct under Rule 8.04. Additionally, Rule 1.06(Q)(2) Texas Rules of Disciplinary Procedure defines professional misconduct as "attorney conduct that occurs in another state or in the District of Columbia and results in the disciplining of an attorney in that other jurisdiction, if the conduct is Professional Misconduct under the Texas Disciplinary Rules of Professional Conduct."

The Preamble to the Texas Disciplinary Rules of Professional Conduct provides, in pertinent part, as follows:

Appendix H

4. A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

9. Each lawyer's own conscience is the touchstone against which to test the extent to which his actions may rise above the disciplinary standards prescribed by these rules. The desire for the respect and confidence of the members of the profession and of the society which it serves provides the lawyer the incentive to attain the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.

By assaulting opposing counsel in open court, JAQUES indicated an inability to conform his conduct to the minimum

standards required by the Texas Disciplinary Rules of Professional Conduct, disrupted an official proceeding, and adversely affected the image of the public toward the legal profession. Further, he has revealed an inability to control his conduct and his emotions within the very arena in which he has chosen to function. Assaulting one's adversary in open court clearly is conduct disruptive of judicial proceedings.

2. On February 1, 1996, JAQUES engaged in abusive and disruptive behavior during his deposition in a case styled, *Dermot Patrick Carroll v. Leonard C. Jaques, et al*, In the United States District Court for the Eastern District of Texas, Beaumont Division, Civil Action No. 1:95-CV-87. Rules violated: Local Rule 3(d)(1)(A-D), 3.04(c)(5) and 3.04(d), Texas Rules of Disciplinary Conduct.

On May 21, 1996, this Court sanctioned JAQUES for abusive and disruptive behavior during his deposition. Rules violated: Local Rule 3(d)(1)(A-D) and Rules 3.04(c)(5) and 3.04(d), Texas Disciplinary Rules of Professional Conduct.

Discussion: As previously mentioned, the Texas Rules of Disciplinary Conduct assume that a lawyer will maintain a high degree of not only professional but personal integrity. As such, some of the Rules of Professional Conduct apply to the conduct of the lawyer, whether it be professional or personal. Be that as it may, JAQUES made his election to appear as counsel, as well as an individual litigator, in the above-entitled and numbered cause. Specifically, during the deposition of JAQUES, the following dialogue occurred:

Page 80, Line 12

Q (By Mr. Blanks) How long does it usually

take you to get a new claim filed from the time it comes in?

(Mr. Cluck) Excuse me. Again, this goes beyond the issues that are presently pending before the court. If you have an answer for him.

A (By Mr. Jaques) I think the whole thing is. I think you ought to limit this thing. *In fact, I'll make my appearance. Hold up. I'll make my appearance of counsel and start limiting myself.*

Regarding the violations of Local Rule 3(d)(1) (A-D) and Rule 3.04(c-d), and Texas Disciplinary Rules of Professional Conduct 3.04(c)(5), JAQUES made, among others, the following comments during his deposition:

Q (By Mr. Blanks) What's the present net worth of the, the corporation, the law firm?

(By Mr. Cluck) Excuse me. Object that that's private and protected as a . . .

(By Mr. Blanks) Mr. Cluck, it's about the only evidence that's readily recognized as bearing on the exemplary damage quantum and I think our courts have held so.

(By Mr. Jaques) Well, you're going to

have to get an order from the court before you ever get that information.

Q (By Mr. Blanks) How about your own net worth, Mr. Jaques? What is that?

(By Mr. Cluck) Excuse me. Object also that this is protected by a —

(By Mr. Jaques) (Interrupting) Get off my back, you slimy son-of-a-bitch.

(By Mr. Blanks) I beg your pardon, sir?

(By Mr. Jaques) You slimy son-of-a-bitch.

(By Mr. Blanks) You're not going to cuss me, Mr. Jaques.

(By Mr. Jaques) You're a slimy son-of-a-bitch.

(By Mr. Blanks) You can cuss your counsel. You can cuss your client.

(By Mr. Jaques) (Interrupting) I'll cuss you.

(By Mr. Blanks) You can cuss yourself. You're not going to cuss me. We're stopping right now.

(By Mr. Jaques) You're damn right.

(By Mr. Blanks) We'll resume with Judge Schell tomorrow. Thank you.

(By Mr. Jaques) Come on. Let's go.

(By Mr. Blanks) Good evening, sir.

(By Mr. Jaques) Fuck you, you son-of-a-bitch.

(By Mr. Blanks) Let's stay on the record until Mr. Jaques has finished his diatribe. We'll be happy to see you back soon, Mr. Jaques. Good evening, sir.

(By Mr. Jaques) (Interrupting) Fuck you. Fuck you.

(By Mr. Blanks) And I wish you a safe trip wherever you're going. Would you please let the record show that Mr. Jaques and his counsel and the two ladies in company with Mr. Jaques have left the room.

(Deposition of Leonard C. Jaques dated February 1, 1996, in *Dermot Patrick Carroll v. Leonard C. Jaques, et al*, Pages 214, line 5 through Page 216, line 4.)

Using the above-described unsolicited and gratuitous profanities against opposing counsel during the course of the deposition, JAQUES again revealed an inability to control his

emotions and/or his conduct during the course of an adversary proceeding and disrupted the process of the deposition and the proceedings. The deposition, taken as a whole, reveals that some 218 pages in length conducted over at least a five-hour period. The delay in the proceedings was largely due to side bar remarks, recesses called by JAQUES, evasive answers and impermissible objections.

Regarding the violation of Local Rule 3(d) and Texas Disciplinary Rules of Professional Conduct 3.04(d), Article Six (6) of the Civil Justice Expense and Delay Reduction Plan provides, in pertinent part, as follows: "Attorneys are prohibited from instructing the deponent not to answer a question or how to answer a question, except to assert a recognized privilege. Other objections shall be made at trial." JAQUES previously entered his appearance as counsel of record and made his own objections throughout the deposition, thereby failing to comply with the Civil Justice Expense and Delay Reduction Plan. Further, he violated Rule 3.04(d) by knowingly disobeying an established rule under the Civil Expense and Delay Reduction Plan.

3. On May 2, 1996, Judge Charles Weiner administratively dismissed, without prejudice, approximately 18,000 maritime cases pending in MDL 875, because JAQUES failed to comply with the pretrial orders of the court. *In re Asbestos Products Liability Litigation*, 1996 WL 239863 (E.D. Pa. 1996). Rules violated: 3.01, 3.04(c)(5) and 3.04(d) Texas Rules of Disciplinary Conduct.

Discussion: On or about July 18, 1995, Judge Weiner entered a pre-trial discovery order requiring JAQUES to submit proof of asbestos exposure in thousands of asbestos claims pending in

his court. According to Judge Weiner's order, JAQUES submitted that he had not supplied the details relating to the asbestos exposure to the defendants. In dismissing the 18,000 cases pending filed by JAQUES, the Court made the following findings:

> The Court believes that it is the responsibility of counsel to only file those cases which are ripe and ready to proceed. To file cases by the thousands and expect the Court to sort out the actionable claims is improper and a waste of the Court's time. Other victims suffer while the Court is clogged with such filings.

Basically, the court determined that JAQUES brought a proceeding that was frivolous, and after giving JAQUES an opportunity to present evidence and/or documentation connecting his thousands of clients' conditions with asbestos exposure, he failed to do so. The result was that perhaps some of JAQUES' meritorious cases were dismissed and, in fact, the prosecution and defense of other cases pending before the court was delayed by JAQUES' clogging of the docket.

4. On March 4, 1996, a judgment was entered against JAQUES and his firm based on a jury finding that they committed fraud on a client. *Carroll v. Jaques*, 927 F. Supp. 216, 219 (E. D. Tex. 1996). Rule violated 804(a)(3).

Discussion: In the above-entitled and numbered cause, JAQUES was sued for malpractice, including, among other things, an allegation of fraud. The Court instructed the jury that in order to find JAQUES guilty of fraud, it must occur based upon clear and convincing evidence, not merely a preponderance

of the evidence. The jury found JAQUES guilty of fraud. Under Rule 804(a)(3), it is a violation of the Disciplinary Rules of Professional Conduct to be found guilty of conduct involving fraud.

5. On January 6, 1995, Judge Kent of the United States District Court for the Southern District of Texas dismissed one of JAQUES' cases and assessed JAQUES attorney's fees for refusal to comply with discovery orders and "blatant forum shopping." *O'Neill v. AGWI Lines*, 74 F.3d 93, 95 (5th Cir. 1996) (affirming sanctions under Rule 37(b)(2)). Rules violated: 3.01, 3.04(c)(5) and 3.04(d) Texas Disciplinary Rules of Professional Conduct.

Discussion: As with Judge Weiner, JAQUES failed to comply with the Court's discovery order and was sanctioned for his conduct.

6. On May 6, 1985, the Sixth Circuit affirmed a district court's decision to hold JAQUES in civil contempt for violating an order to appear for trial and for lying to two federal judges regarding his whereabouts and reason for his failure to appear. *In re Jaques*, 761 F.2d 302, 304 (6th Cir. 1985). Rule violations of Local Rule 3(d)(1)(A-C), and Texas Disciplinary Rules of Professional Conduct 3.03(a)(1).

Discussion: JAQUES lied to two federal judges and was held in contempt for his actions. Clearly, such constitutes a false statement of material fact to a tribunal.

In accordance with Local Rule 3(d)(2)(B), this Show-Cause Hearing is hereby scheduled for November 12, 1996, at 9:00 a.m. Under Local Rule 3(d)(2)(B), Thomas P. Roebuck, Jr. is appointed Special Prosecutor in this matter.

Appendix H

October 10, 1996

s/ Richard A. Schell
RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE

APPENDIX I — SUPREME COURT OF THE UNITED STATES RULE 10

RULE 10 OF THE SUPREME COURT RULES

Rule 10. Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed form the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an

> important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.